



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Section 18 of the Housing (Scotland) Act 1988 (“the Act”)

Chamber Ref: FTS/HPC/EV/24/0457

Re: Property at Flat 2/2, 35 Baldovan Terrace, Dundee, DD4 6NH (“the Property”)

Parties:

Hillcrest Enterprises Ltd, 1 Explorer Road, Dundee, DD2 1EG (“the Applicants”)

Mr Lee Smith, Flat 2/2, 35 Baldovan Terrace, Dundee, DD4 6NH (“the Respondent”)

Tribunal Members:

Steven Quither (Legal Member) and Angus Lamont (Ordinary Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) UNANIMOUSLY determined that that the order for possession be GRANTED.

1. BACKGROUND

This is an application to bring to an end a Short Assured Tenancy Agreement, commencing 13 February 2017 for 6 months and continuing thereafter by tacit relocation on a month to month basis. Said Agreement was between Northern Housing Company Limited and the Respondent, the Applicants having taken over and continued same in terms of acquisition of the Property and others by Hillcrest Homes (Scotland) Limited in 2019 and subsequent Minute of Lease by them in favour of the Applicants in 2021.

This application was based on Ground 8A in Schedule 5 of the Act, providing a repossession ground where, basically, 6 months rent arrears had accrued at the time of service of notice under s19 of the Act, which ground was added by the Cost of Living (Tenant Protection)(Scotland) Act 2022.

An associated case, under Tribunal reference CV/24/0458, for payment of unpaid rent was considered together with this application.

In terms of s18 of the Act as amended by the Coronavirus (Scotland) Act 2020, the Tribunal requires to be satisfied not only that the formal requirements of said section have been complied with but also that for any of the Schedule 5 grounds it is reasonable to make the order for repossession. For the avoidance of doubt, at all times the Tribunal was aware of this requirement.

The supporting documentation for this application confirmed that appropriate notice periods had been given in respect of the s19 Notice (Form AT6) and that the appropriate local authority had been notified of the application in terms of s11 of the Homelessness etc. (Scotland) Act 2003. The Tribunal also had regard to the terms of letters dated 23 May, 8 August and 13 September, all 2023, sent to the Respondent by the Applicants' agents, providing him with detailed advice and information as to how he might address the difficulties he was facing (which letters were lodged on the day of the Case Management Discussion ("CMD") referred to hereafter.

In their application, the Applicants stated that they wished possession in view of the level of arrears which had accrued, that it was reasonable to grant the eviction order sought, given said arrears and that, accordingly, Ground 8A was established.

The original application, made on 26 January 2024, was based on rent arrears then outstanding of £3242-70, when the monthly rent was £359-12, having increased from £2165-34 when said s19 Notice was served by sheriff officer on 10 October 2023, along with Notice to Quit, requesting the Respondent to leave the Property by 14 December 2023.

Said Application was accepted by Notice of Acceptance of 30 January 2024, by virtue of which a CMD was duly fixed in respect of both this and the other associated case. Prior to said CMD, the Applicants lodged an updated rent statement showing rent due as at 1 June 2024 of £5038-30, indicating they would be seeking to amend accordingly.

In addition, the Tribunal received sheriff officer confirmation of service of both applications on the Respondent on 17 May 2024.

In view of cancellation of another CMD at 10am on the same day, the Tribunal asked if these parties could attend at 10am instead of the original time of 2pm. While the Applicants' agents confirmed they could, there was no response to this request by the

Respondent. Nonetheless, the Tribunal decided to call the case at 10am, just in case the Respondent attended after all.

Since the question of the unpaid rent was at the heart of and formed the basis for both cases, the Tribunal considered the issue to be resolved was the reason behind any arrears of rent accruing, after a period of some years without any apparent issue.

2. CASE MANAGEMENT DISCUSSION

Said CMD took place by teleconference on 20 June 2024, firstly at 10am. The Applicants were represented by Ms Callaghan from TC Young, Solicitors, Glasgow and the Respondent was neither present nor represented.

The Tribunal asked Ms Callaghan to clarify if what appeared to be “style” letters lodged had been extended and sent to the Respondent. It also clarified that some payment of rent had since been made by the Respondent. It did not consider the Respondent was prejudiced in any way by seeking clarification only of these matters in his absence. The Tribunal decided to recall the case at 2pm, in case the Respondent attended at the original time advised to him and for the Applicants to clarify the matters raised.

At 2pm, the Applicants were again represented by Ms Callaghan and the Respondent was in attendance also

Ms Callaghan advised and confirmed, in relation to this application:--

She was seeking the order for re-possession based on ground 8A.

The original rent in 2017 had been £325-55 per month but over time this had increased to £359-12 per month as from 1 August 2023.

Notice to Quit and s19 Notice had been served by sheriff officer on 10 October 2023, giving the Respondent notice that proceedings could commence anytime after 14 December 2023.

When proceedings commenced, outstanding rent was £3242-70 and it now stood at £4038-30 (about 11 months rent), taking into account 2 recent payments of £500 on 6 and 12 June, prior to which the most recent payment had been on 19 September 2023. She was seeking to amend the sum of rent arrears to this amended amount of £4038-30, which the Tribunal was content to allow (after hearing from the Respondent that he did not dispute said sum).

The Applicants had complied with pre-action requirements (in terms of said letters of 23 May, 8 August and 13 September, all 2023) and had made efforts to discuss matters with the Respondent, but he had failed to engage.

The Applicants depended on regular and dependable payments and in all the circumstances were seeking the order for repossession.

By way of response, the Respondent advised and confirmed:--

He did not dispute the sum was due nor, indeed, anything said on behalf of the Applicants.

He was trying to address matters, as evidenced by the 2 recent payments made but he had had a fairly lengthy period of difficult personal circumstances, including trying to address a gambling addiction and he was taking anti-depressant medication (mirtazapine). He had become somewhat estranged from his family.

Notwithstanding these issues, he had maintained full-time employment with Asda, although he had encountered problems there too, due to being off sick. Nonetheless, he was still so employed and Asda had been supportive. However, his sickness absences had caused his income to be reduced.

He resided alone at the Property and had not sought any assistance with his rent, hoping to resolve the problem himself through continuing to work.

He had tried to resolve matters with a Nicola Forbes at the Applicants but had been unable to do so. Nonetheless, he hoped to be given the chance to pay off the arrears and could pay £500 per month to pay current rent and reduce arrears. He could possibly pay more but not to any considerable extent.

Ms Callaghan responded to say she was aware the Applicants were sympathetic but nonetheless she had very firm instructions and in the circumstances of such a substantial amount of arrears having accrued, the Applicants were asking the Tribunal to consider it reasonable to grant the eviction order sought.

3. FINDINGS IN FACT

The Respondent is due and liable for arrears of rent up to 17 June 2024 in the sum of £4038-30 arising out of a Short Assured Tenancy for the Property between the parties commencing 13 February 2017 in respect of which the Respondent agreed to pay rent of £325-55 per month which, over time had increased to £359-12 per month as from 1 August 2023.

When s19 Notice was served, he was in arrears of £3242-70, which exceeds 6 months rent under the tenancy.

4. REASONS FOR DECISION

Having found that the Respondent was due and liable for arrears of rent in the sum of £4038-30 and that a sum of more than 6 months rent had accrued when the s19 Notice was served, the Tribunal was of the view that Ground 8A founded upon by the Applicant in this application, had been established. The Tribunal did not doubt the Respondent's sincerity in saying he would address the arrears, but felt his proposals in respect of same would, even if adhered to without fail, still result in the Applicants requiring to wait an inordinate length of time for the Respondent's account to be brought up to date. Accordingly, in view of said level of arrears which had accrued, the Tribunal considered it just and reasonable to grant the order for possession now sought.

5. DECISION

To grant the order for possession sought by the Applicants.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.


SR QUITHER

24 JUNE 2024

Legal Member/Chair

Date